IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6001 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATHOD BALSANGJI LAXMANJI

Versus

DIST MAGISTRATE

Appearance:

1. Special Civil Application No. 6001 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. In exercise of powers conferred under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), District Magistrate, Mehsana, vide order dated March 17, 2001, Annexure A to the petition, detained the petitioner - detenu.

2. The averments made in the petition and the

grounds of detention make it clear that the detaining authority has considered the petitioner as a bootlegger within the meaning of Section 2 (b) of the Act and as three cases under the Prohibition Act are registered against him and statements of two anonymous witnesses in an unregistered offence are recorded against him, according to the detaining authority, the activities of the petitioner are detrimental to the maintenance of public order and by exercising powers under Section 9 (2) of the Act, by not disclosing the identity of those anonymous witnesses, the petitioner is detained.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of mandamus or writ of habeas corpus or any other appropriate order or direction quashing and setting aside the impugned order of detention and to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Ms. Kachhavah, learned advocate for the petitioner, has restricted her arguments to the effect that by way of representation certain documents like statements recorded under Section 161 were demanded by the petitioner and the State Government had directed the District Magistrate detaining authority - to supply those documents to him. In spite of the order passed by the State Government, the District Magistrate has not supplied those documents and, therefore, on account of non-supply of documents demanded by the petitioner, his right to make an effective representation has been seriously prejudiced and infirmity in this regard is violative of the constitutional safeguard enshrined in Article 22 (5) of the Constitution and, therefore, continued detention of the petitioner is required to be held illegal and he may be set at liberty forthwith.

5. Mr. K.T. Dave, learned AGP who appears on behalf of the respondents, has made oral submissions. He however, does not dispute the factual aspect of non-supply of the documents demanded by the petitioner by way of representation inspite of the direction given by the State Government to the District Magistrate to supply the same to him and, therefore, he urged to pass appropriate orders.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition, the documents annexed

therewith and also the impugned order of detention.

7. On having perusal of the documents annexed with the petition, it is seen that the petitioner had made a representation on July 17, 2001 addressed to the District Magistrate, Mehsana. The said representation was received by the District Magistrate on July 19, 2001. The District Magistrate forwarded the same to the State Government on July 20, 2001 and the State Government received it on July 21, 2001. The State Government vide order dated July 24, 2001 directed the District Magistrate to supply the documents which were demanded by the petitioner in his representation. Notwithstanding the above facts, the District Magistrate vide order dated August 18, 2001 refused to supply the documents demanded by the petitioner. Thus the District Magistrate has not acted as per the order of the State Government by refusing to supply the documents as demanded by the petitioner. The District Magistrate cannot claim more wisdom than the State Government when the State Government thought it fit that those documents are relevant and they must be supplied to the detenu and the District Magistrate ought not to have refused to supply those documents to the detenu. Therefore, on the ground of non-supply of documents to the detenu which were directed to be supplied to him by the State Government has seriously prejudiced the petitioner's right of making an effective representation and infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution and on this ground alone the order of detention stands vitiated and, therefore, according to me, continued detention of the petitioner is illegal and the petition deserves to be allowed.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)